

**VIRTUAL NET METERING CREDIT PURCHASE AGREEMENT**

**BETWEEN**

**GREENSKIES RENEWABLE ENERGY LLC**

**AND**

**CONNECTICUT STATE COLLEGES AND UNIVERSITIES**

**DATED AS OF [ \_\_\_\_\_ ]**

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**EXHIBITS**

Exhibit A	Solar Energy Facility
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Exhibit C	Premises
Exhibit D	Schedule of Definitions and Rules of Interpretation
Exhibit E	Energy Credit Rate
Exhibit F	Reserved
Exhibit G	Minimum Energy Output Requirements



## VIRTUAL NET METERING CREDIT PURCHASE AGREEMENT

THIS VIRTUAL NET METERING CREDIT PURCHASE AGREEMENT (as may be amended, extended, restated or otherwise modified, the “*Agreement*”) is made and entered into by and between Greenskies Renewable Energy LLC., a Clean Focus Company, with offices at 180 Johnson Street, Middletown, CT 06457 (“*Seller*”), and Connecticut State Colleges and Universities, a public institution of the state system of higher education with offices at 61 Woodland Street, Hartford, CT 06105 (“*Buyer*”) as of [REDACTED] (the “*Effective Date*”). Seller and Buyer are sometimes hereinafter referred to individually as a Party and collectively as the Parties.

### RECITALS

- A. Seller agrees to finance, own and operate a solar energy facility, as more particularly described in Exhibit A (the “*SEF*”) on the Property (as defined by Exhibit B); and
- B. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of the Energy Credits generated by the SEF during the Term and otherwise in accordance with the terms of this Agreement.
- C. Buyer is authorized to enter this Agreement under provisions of Sections 10a-6, 4a-52a and 10a-151b of the General Statutes of the State of Connecticut.

### AGREEMENT

In consideration of the foregoing recitals, the mutual agreements, representations, warranties and covenants set forth in this Agreement and the Schedules and Exhibits hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

#### ARTICLE 1.

##### DEFINED TERMS; RULES OF INTERPRETATION

**1.1 Defined Terms.** Capitalized terms used in this Agreement shall have the meanings ascribed to them in the Schedule of Definitions and Rules of Interpretation attached hereto as Exhibit D and made a part of this Agreement by this reference, or elsewhere in this Agreement.

**1.2 Rules of Interpretation.** The rules of interpretation in the Schedule of Definitions and Rules of Interpretation shall apply to this Agreement unless expressly provided otherwise.

#### ARTICLE 2.

##### TERM

**2.1 Term.** The initial term of this Agreement (the “*Term*”) shall commence on the Effective Date and shall be in effect until the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date, provided that, upon the subsequent mutual agreement in writing of the Parties, the Term may be extended by an additional five (5) years.

**2.2 Conditions Precedent.** The respective rights and obligations of the Parties under this Agreement (subject to Section 2.4) are conditioned upon the satisfaction in full (or waiver by Seller) within seven hundred thirty (730) days after the Effective Date of (i) the receipt by Seller of final approval from Buyer’s Serving Utility to operate and interconnect the SEF, and (ii) the following:

(a) Seller shall have received financing sufficient to enable it to purchase, construct, operate and maintain the SEF as required by this Agreement on terms acceptable to the Seller in its sole discretion;

(b) Seller shall have obtained all Governmental Approvals and approvals from Buyer's Serving Utility, which approvals shall include conditions and terms satisfactory to Seller in its sole discretion, which discretion shall include the right to terminate this Agreement if capital improvements are required to be made as a condition to receiving an interconnection agreement from Buyer's Serving Utility and such improvements not economically acceptable to Seller in its sole discretion;

(c) Seller shall have obtained confirmation from the applicable Governmental Authorities or shall be otherwise satisfied the Seller will receive the Solar Renewable Energy Certificates, and the SEF is eligible for Virtual Net Metering Credits in accordance with the Virtual Net Metering Program.

(d) Buyer shall have executed documents required by any Governmental Entity to participate in the Virtual Net Metering Program.

(e) Seller shall have entered into an Interconnection Agreement with Buyer's Serving Utility that qualifies under applicable virtual net metering programs, under which any over-production of Virtual Net Metering Credits ("VNMC") is carried as a credit on Buyer's utility bill against later shortfalls in production of the SEF compared to Buyer's electricity consumption; and

(f) Completion of a physical inspection of the Premises, including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Premises for the SEF.

Any unreasonable delay on the part of Buyer with respect to these conditions shall extend said seven hundred thirty (730) day period by a length of time mutually agreed by the Parties, but not less than the number of days caused by the Buyer and which agreement shall not be unreasonably withheld, delayed or conditioned.

**2.3 Notice of Commercial Operation.** Unless otherwise agreed by the Parties, and subject to the remaining provisions of this Agreement, Seller shall notify Buyer when the SEF has achieved Commercial Operation (the "*Notice of Commercial Operation*").

(a) **Construction Commencement Notice.** Seller shall coordinate with Buyer a schedule mapping out permitting, Buyer approvals, project milestones and time frames.

(b) **Construction Completion Deadline.** If Commercial Operation of the SEF does not occur on or before the date that is five hundred and forty-eight (548) days after the Effective Date as referenced in the notice provided pursuant to Section 2.3(a) herein, either Party hereto shall have the right to terminate this Agreement by providing written notice to the other at any time prior to the date upon which Commercial Operation is achieved.

**2.4 Survival.** The terms and conditions of this Agreement shall survive the termination or expiration of this Agreement only (i) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations; and/or (ii) as otherwise specified herein.

**ARTICLE 3.**  
**PURCHASE AND SALE; ASSIGNMENT, GOVERNMENTAL CHARGES**

**3.1 Energy Credits.** Energy delivered to the Delivery Point shall be recognized in the form of Energy Credits where each kilowatt-hour of Energy delivered to the Delivery Point constitutes one (1) Energy Credit.

**3.2 Energy Credit Rate.** The Energy Credit Rate shall be in accordance with Exhibit E.

**3.3 Sale of Energy Credits.** Seller shall sell to Buyer and Buyer shall purchase from Seller all delivered to the Delivery Point at the Energy Credit Rate for the Term.

(a) The payment to be made by Buyer to Seller shall equal the Energy Credits for the relevant period multiplied by the Energy Credit Rate for such period.

(b) Buyer shall identify to Seller and to Buyer's Serving Utility, thirty (30) days after the start of construction, up to five (5) Beneficial Accounts owned and controlled by Buyer (the "***Buyer's Beneficial Accounts***"), which shall benefit from the VNMCs assigned by the Buyer's Serving Utility. Buyer may amend the designation of Buyer's Beneficial Accounts not more than once per subsequent calendar year by providing at least 60 days prior written notice to the Seller and Buyer's Serving Utility; however, the total of Buyer's Beneficial Accounts shall not exceed five (5) at any time. Buyer will cooperate with the Seller in providing any additional information which Buyer's Serving Utility deems necessary to qualify Buyer's Beneficial Accounts.

(c) Buyer recognizes that Seller has an interest in maximizing the output of the SEF and Energy Credits, and Seller shall not be required to curtail the output of the SEF at any time due to lack of demand on the part of Buyer.

**3.4 Title and Risk of Loss of Energy Credits.** Title to and risk of loss of the Energy Credits will pass from Seller to Buyer at the Delivery Point. As between the Parties, Seller shall be deemed to be in exclusive control of all Energy prior to the Delivery Point, and Buyer shall be deemed to be in exclusive control of all Energy Credits at and from the Delivery Point. Except as otherwise provided herein, Seller warrants that it will deliver the Energy to the Delivery Point, free and clear of all liens, security interests, claims, and other encumbrances created by Seller.

**3.5 Governmental Charges.**

(a) Except as set forth in Section 3.5(b), Seller is responsible for paying all local, state and federal income taxes attributable to Seller for income received under this Agreement.

(b) The Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Energy Credits hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefor, provide the applicable Party with all necessary documentation to evidence such exemption or exclusion.

**3.6 Minimum Output Requirements.**

(a) Minimum Electric Demand. Buyer shall be responsible for ensuring that electric requirements from Buyer's Beneficial Accounts, as may be amended from time to time pursuant to Section 3.3 (b) are such that the Buyer can utilize one hundred and ten percent (110%) of the estimated annual Energy Credits

produced during each year of the Term, based on the Expected System Output. By January 31st of each year of the Term, or upon request from Seller, Buyer shall provide to Seller all information which Seller may require in order to confirm that electric requirements from Buyer's Beneficial Accounts and any other Buyer's Serving Utility accounts under Buyer's control meet the minimum electric demand requirement described in this section, provided the Buyer can modify the Buyer's Beneficial Accounts, pursuant to Article 3.4 (b), herein. Notwithstanding the foregoing, the Buyer shall be required to purchase all of the Energy Credits delivered by the SEF regardless of the Buyer's ability to use such VNMCs assigned by the Buyer's Serving Utility.

(b) **Minimum Output Requirements.** Buyer shall be entitled to the Energy Credits associated with the entire Energy output of the SEF. The Parties anticipate that the SEF will be a nominal [2,000] kW AC system. Based on this size, from and including the Commercial Operation Date until the two (2) year anniversary thereof, the SEF shall produce a minimum amount of Energy equivalent to ninety-percent (90%) of the expected output of the SEF or 4,022,248 in kilowatt-hours per Exhibit A (the "**Minimum Energy Output Requirements**") each subsequent two (2) year period, each a true-up period as shown in Exhibit G. The Minimum Energy Output Requirements shall decline by an assumed one half percent (0.5%) in each year of operation for the Term of this Agreement to account for natural degradation of the SEF. Buyer agrees that such Minimum Energy Output Requirements for any given true-up period shall be subject to the following adjustments to address their negative impact on the SEF and its ability to meet the Minimum Energy Output Requirements: (i) weather normalization due to the lack of Insolation on the SEF, (ii) acts of third parties (iii) Force Majeure events, and (iv) SEF Loss. Seller shall use commercially reasonable efforts to remedy any shortfall should the SEF fail to produce the Minimum Energy Output Requirements and this failure not be attributable to the foregoing adjustment factors. Any shortfall in the Minimum Energy Output Requirements shall be satisfied by (v) setoff from any and all excess Energy Credits generated from a previous five (5) year true up period and the (vi) Seller's payment to Buyer equal to the Minimum Energy Output Requirement for the true-up period less the amount of Energy Credits delivered by the SEF during the same true-up period less the excess Energy Credits from Section 3.6(b)(v), the difference multiplied by the Energy Credit Rate provided for in Section 3.2 and Exhibit E. Any excess Energy Credits generated during any two (2) year true-up shall accumulate and be banked against any future shortfall in Minimum Energy Output Requirements.

(c) The Parties agree that the Minimum Energy Output Requirements are based on estimated output, and that the SEF size and output of a SEF may be modified prior to Commercial Operation of such SEF due to any applicable Law or Utility Requirements. Any such adjustment of the SEF size and output shall result in a modification of the applicable Minimum Energy Output Requirements as reasonably determined by the Seller.

(d) Seller shall not be required to meet the Minimum Energy Output Requirement to the extent the failure to meet such Minimum Energy Output Requirement arises out of or results from: (i) a Person other than Seller or its approved service providers installing, removing or repairing the SEF; (ii) destruction, damage, modification or alteration to the SEF or its ability to produce energy not caused by Seller or its approved service providers while servicing the SEF; (iii) Buyer's failure to perform, or breach of, its obligations under this Agreement; (iv) any third party acts that reduces the output of the SEF; (v) any event of Force Majeure; (vi) a power or voltage surge caused by a Person other than Seller or its approved service providers while servicing the SEF; (vii) any SEF failure not caused by a SEF defect; or (viii) theft of all or any part of the SEF.

(e) **Change in Law.** The Parties acknowledge and agree that the Energy Credit Rate is based on assumptions related to the availability of Capacity Attributes, Environmental Attributes, Virtual Net Metering Program, Virtual Net Metering Credits and Tax Benefits, including tax-advantaged financing structures. In the event of the elimination or alteration of one or more Capacity Attributes, Environmental Attributes, Virtual Net Metering Program, VNMCs, Tax Benefits or any other change in law that results in a material adverse economic



impact on Seller in respect to this Agreement, the Parties shall work in good faith to amend this Agreement within thirty (30) Business Days after such elimination or alteration as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated hereunder by the Parties. In the event the Parties cannot amend this Agreement during the established timeline, the Parties shall resolve the Dispute per the Dispute Resolution process pursuant to Section 15.13.

(f) **Material Change to Virtual Net Metering Program.** In the event that any material changes to the Virtual Net Metering Program results in a material adverse economic impact on the Buyer, the Parties shall negotiate in good faith to amend this Agreement within thirty (30) Business Days after such programmatic change to attempt to restore the economic benefits to the Buyer while maintaining the economic benefits required by the Seller, its Affiliates and or Financing Parties. In the event the Parties cannot amend this Agreement in thirty (30) days, the Parties shall proceed according to the original terms of this Agreement.

**3.7 Capacity Attributes Revenue.** The Parties acknowledge and agree that Buyer shall be entitled to fifty percent (50%) of any income, rebate or credit which is received by or credited to Seller and which is directly related to the Capacity Attributes of the SEF (collectively, the “*Capacity Attributes Revenue*”).

#### **ARTICLE 4. ENVIRONMENTAL ATTRIBUTES AND TAX BENEFITS**

**4.1 Title to Environmental Attributes, Capacity Attributes, and Tax Benefits.** All Environmental Attributes relating to the SEF or the Energy will be and shall remain property of Seller including, without limitation, Solar Renewable Energy Certificates or any comparable instruments. All Capacity Attributes and Tax Benefits will be and shall remain property of Seller. Buyer shall assign to Seller all rights to and income from rebates, credits, or reimbursements attributable to the SEF. Buyer shall not report to a Person that Buyer owns any Environmental Attributes, Capacity Attributes, Tax Benefits, rebates, credits, or reimbursements as assigned to Seller herein belong to any Person other than Seller. Seller shall be the sole owner and title holder of the SEFs at all times during the Term of this Agreement, which SEFs shall (i) at all times retain the legal status of personal property of Seller as defined under Article 9 of the Uniform Commercial Code and (ii) not attach to or be deemed a part of, or fixture to, the Premises. Without limiting the generality of the foregoing, Seller may file one or more precautionary financing statements, including fixture filings in such jurisdictions as it deems appropriate with respect to the SEFs to protect Seller’s rights therein. Buyer shall take no position on any tax return or other filings suggesting that it is anything other than a purchaser of Energy Credits from the SEFs. In this regard, the Parties intend this Agreement to be treated as a “service contract” within the meaning of section 7701(e)(3) of the Internal Revenue Code.

**4.2 Further Assurances.** Promptly upon Seller’s request and provided Seller is not in default hereunder, Buyer shall execute such documents and instruments reasonably necessary or desirable to (i) effect, evidence or transfer to Seller all right, title and interest in and to the Environmental Attributes and Tax Benefits, or (ii) effect, participate, or enroll the SEF, Environmental Attributes, Capacity Attributes, or the utility account for the Meter, for the benefit of the Seller, in any program administered by Buyer’s Serving Utility, Governmental Entity, independent system operator, utility, transmission and distribution provider or other similar entity. If the standards used to qualify the Capacity Attributes or Environmental Attributes to which Seller is entitled under this Agreement are changed or modified, Buyer shall promptly upon Seller’s request and without cost to Buyer use all commercially reasonable efforts to cause the Capacity Attributes or Environmental Attributes to comply with new standards as changed or modified.

**4.3 Promotion and Branding.** Nothing in this Agreement is intended to preclude Buyer from distributing advertising or other promotional material highlighting the use of VNMCs generated by the SEF for commercial or branding purposes. Nothing in this Agreement is intended to preclude Seller from distributing advertising or other promotional material highlighting the generation of renewable energy and delivery and sale of Solar Renewable Energy Certificates (“SREC”) from the SEF for commercial or branding purposes. Subject to the foregoing, Buyer and Seller are mutually permitted to use the SEF for promotional purposes, which shall be limited to distribution of written materials, and may not include site visits or signs. Notwithstanding the foregoing, neither Party will use the other Party’s (or any Financing Party’s) corporate name, logo or other identification in any marketing, promotion or branding without the express written permission of the other Party.

## **ARTICLE 5. CONSTRUCTION, MAINTENANCE AND MONITORING**

**5.1 Construction, Maintenance, Monitoring and Removal of SEF by Seller.** Seller shall, at its sole cost and expense, (i) on or before seven hundred thirty (730) days after the Effective Date, as may be extended in accordance Section 2.2, construct the SEF and achieve Commercial Operation in a good and workmanlike manner and in accordance with all Laws and Prudent Utility Practices in all material respects, (ii) maintain the SEF in good condition (including any necessary cleaning of solar panels) and repair in accordance with Prudent Utility Practices and the terms of this Agreement and all Laws in all material respects, and (iii) monitor the SEF’s performance to ensure that any SEF malfunction causing a loss of Energy will be discovered and rectified in accordance with Prudent Utility Practices in all material respects. Seller may modify, alter, expand or otherwise change the SEF without the prior written consent of Buyer, so long as such modifications, alterations, expansions or other changes do not result in a material decrease in the capacity of the SEF or a material adverse impact on the operations of the SEF or the SEF’s capability to operate.

**5.2 Telemetry.** Seller shall provide a means for Buyer to access real-time data or telemetry with respect to the SEF’s performance through means that may reasonably be incorporated into advertising and promotional materials. Subject to Section 5.1 above, Seller retains the right to use telemetry and other monitoring data concerning the performance of the SEF for evaluative, maintenance, and promotional purposes.

## **ARTICLE 6. METERING DEVICE AND METERING**

**6.1 Metering Equipment.** Seller shall provide, install, own, operate and maintain a Seller owned Metering Device with the ability and right for Buyer to access real-time via internet connection to monitor the Seller owned Metering Device. The Metering Device shall be kept under seal, such seal to be broken only by Seller when the Metering Device is to be tested, adjusted, modified or relocated. In the event that Seller or Buyer breaks a seal, the applicable Party shall notify the other as soon as practicable. Seller shall, at Seller’s sole cost and expense, maintain Metering Device in accordance with Prudent Industry Practice including testing the Metering Device at least once annually.

**6.2 Measurements.** Readings of the Metering Device shall be conclusive as to the amount of Energy output; *provided, however*, that if the Metering Device is out of service, is discovered to be inaccurate pursuant to Section 6.3, or registers inaccurately, measurement of Energy to the Delivery Point shall be determined in the following sequence: (a) by estimating by reference to quantities measured during periods of similar conditions when the Metering Device was registering accurately; or (b) if no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, the Parties shall deem the measurement of Energy to the Delivery Point to have been in accordance with a technical analysis of expected generation during

such time period, as provided by Seller, subject to Buyer's good faith review and approval, using accepted industry practice for such estimations.

### **6.3 Testing and Correction.**

(a) In the event of a difference between the kWh as reported by Seller and kWh as reported by the Buyer Serving Utility, upon Buyer's reasonable request, Seller shall inspect and test the Metering Device for accuracy (with such inspection and testing at Buyer's sole expense if requested more than once within a twelve (12) month period). Each Party and its consultants and Representatives shall have the right to witness each test of the Metering Device to verify the accuracy of its measurements and recordings. Seller shall provide at least five (5) days prior written notice to Buyer of the date upon which any such test is to occur. Seller shall prepare a written report setting forth the results of each such test and shall provide Buyer with copies of such written report not later than ten (10) days after completion of such test. Subject to Section 6.3(b) below, Seller shall bear the cost of the testing of the Metering Device and the preparation of the Metering Device test reports.

(b) The following steps shall be taken to resolve any disputes regarding the accuracy of the Metering Device:

- (i) If either Party disputes the accuracy or condition of the Metering Device, such Party shall so advise the other Party in writing.
- (ii) Seller shall, within fifteen (15) days after receiving such notice from Buyer or Buyer shall, within such time after having received such notice from Seller, advise the other Party in writing as to its position concerning the accuracy of such Metering Device and state reasons for taking such position.
- (iii) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause the Third Party Monitor to test the Metering Device.
- (iv) If the Metering Device is found to be inaccurate by not more than two percent (2%), any previous recordings of the Metering Device shall be adjusted in accordance with manufacturer's recommendations.
- (v) If the Metering Device is found to be inaccurate by more than two percent (2%) or if such Metering Device is for any reason out of service or fails to register, then (A) Seller shall promptly cause any Metering Device found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, (B) the Parties shall estimate the correct amounts of Energy delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 6.2, and (C) Seller shall bear the cost of inspection and testing of the Metering Device. If as a result of such adjustment the quantity of Energy output for any period is decreased, Seller shall reimburse Buyer within thirty (30) days for the amount paid by Buyer in consideration for the decrease. If as a result of such adjustment the quantity of Energy output for any period is increased, Buyer shall pay Seller within thirty (30) days for the additional quantity of Energy at the Energy Payment Rate applicable during the applicable period.
- (vi) A credit towards future energy payments by Buyer from Seller shall constitute a payment under this Agreement.

**ARTICLE 7.**  
**LOSS, DAMAGE OR DESTRUCTION OF SEF; FORCE MAJEURE**

**7.1 SEF Loss.** In the event of any SEF Loss, as may be determined in the reasonable discretion of Seller, Seller shall have the option, in its sole discretion, to repair or replace the System or terminate this Agreement. Seller shall notify Buyer in writing of its election within ninety (90) days after the date of the damage to the System. Seller shall, under all circumstances, be entitled to all insurance proceeds with respect to the System. If Seller elects to repair or replace the System, Seller shall undertake such repair or replacement as quickly as practicable. If Seller elects to terminate this Agreement, the termination shall be effective immediately upon delivery of the notice under this Section 7.1.

(a) In the event of any SEF Loss that, in the reasonable judgment of Seller, results in less than total damage, destruction or loss of the SEF and more than five (5) years remains in the Term, this Agreement will remain in full force and effect and Seller will, at Seller's sole cost and expense, subject to Section 7.1(c) below, repair or replace the SEF as quickly as practicable.

(b) In the event of any SEF Loss that, in the reasonable judgment of Seller, results in total damage, destruction or loss of the SEF, or to the extent the SEF is damaged during the last five (5) years of the Term, Seller shall, within thirty (30) Business Days following written notice from the Buyer of the occurrence of such SEF Loss, notify Buyer whether Seller is willing, notwithstanding such SEF Loss, to repair or replace the SEF, it being understood that in such instance, Seller shall have no obligation to restore the SEF.

(c) In the event that Seller notifies Buyer that Seller is not willing to repair or replace the SEF, this Agreement will terminate automatically effective upon the effectiveness of such notice unless Buyer agrees to pay the restoration cost. In the event that Seller notifies Buyer that Seller is willing to repair or replace the SEF, the following shall occur: (A) this Agreement will remain in full force and effect, and (B) Seller will repair or replace the SEF as quickly as practicable but in any event within nine (9) months of the casualty as may be extended by mutual agreement of the Parties.

**7.2 Performance excused by Force Majeure.** To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "**Claiming Party**") gives notice and details of the Force Majeure event to the other Party as soon as practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, then the Claiming Party will be excused from the performance of its obligations under this Agreement affected by the Force Majeure event (other than the obligation to make payments under this Agreement) for a period equal to the effect of the disabling Force Majeure circumstances. The Party affected by Force Majeure will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; *provided, however*, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion.

**7.3 Termination due to Force Majeure.** If a Claiming Party claims a Force Majeure for a consecutive period of twelve (12) calendar months or longer, either Party may terminate this Agreement, in whole or in part, without any liability to the other Party as a result of such termination (except with respect to payment of amounts accrued prior to termination and actions or omissions that occur prior to termination) by providing written notice of such termination at any time prior to the date upon which the obligation prevented by such Force Majeure has been satisfied. Without limiting the generality of the foregoing, if Seller does not deliver Energy Credits from the SEF to Buyer for a continuous period of twelve (12) months for any reason other than Buyer's default hereunder, Buyer shall have the right to terminate this Agreement by delivering written notice of such termination at any time prior to the date upon which the SEF resumes the production of Energy.



7.4 **Insurance Coverage.** The Seller agrees that while performing services specified in this contract that it shall carry sufficient insurance (liability and/or other) as applicable according to the nature of the service(s) to be performed and name the Buyer as an additional insured in such policies. If requested, certificates of such insurance shall be provided to the Buyer prior to the performance of services.

## ARTICLE 8. EVENTS OF DEFAULT; REMEDIES

8.1 **Events of Default.** An Event of Default means, with respect to a Party (a “*Defaulting Party*”), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required under this Agreement if such failure is not remedied within ten (10) Business Days after receipt of written notice from the Party claiming the failure (a “*Non-Defaulting Party*”);
- (b) any representation or warranty made by such Party in this Agreement is intentionally false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within thirty (30) days after receipt of written notice from the Non-Defaulting Party; provided, however, that, if despite due diligence such default is not capable of cure within said thirty (30) days, the Defaulting Party shall have ninety (90) days to cure such default, provided the Defaulting Party diligently pursues such cure and substantially completes same within said ninety (90) days after the receipt of such notice. The Parties may mutually agree in writing that the Defaulting Party shall have additional time as is reasonably necessary to cure such default;
- (d) such Party becomes Bankrupt; or
- (e) solely as to Buyer, (i) the closure or shutdown of a sufficient amount of Buyer’s operations making it unable to accept all of the Energy Credits delivered by the SEF; or (ii) Buyer prevents assignment of Energy Credits from the SEF and assignment of the VNMCs by the Buyer’s Electric Utility.

8.2 **Buyer Remedies.** Upon the occurrence and during the continuance of an Event of Default where Seller is the Defaulting Party (a “*Seller Event of Default*”), Buyer shall have all rights available to it at law and in equity; however, notwithstanding the foregoing, it is agreed that Buyer shall have the right to terminate this Agreement as a result of a Seller Event of Default only in the event such Seller Event of Default is a monetary Event of Default or a material non-monetary Event of Default that has resulted in substantial harm, economically or otherwise, to Buyer (each such default being a “*Seller Termination Default*”). In the event any Seller Termination Default remains uncured following any applicable notice and cure period, Buyer shall have the right to provide Seller with written notice of its intent to terminate this Agreement. In the event such specified Seller Termination Default and any other subsequent termination event is not cured within forty-five (45) days of Seller’s receipt of such notice of intent to terminate (which notice shall specify the exact Seller Termination Default and any other being claimed) then thereafter, and only thereafter, Buyer shall have the right to (i) terminate this Agreement as of such date by providing written notice of such termination to Seller.

### **8.3 Seller Remedies.**

(a) Upon the occurrence and during the continuance of an Event of Default where Buyer is the Defaulting Party (a "***Buyer Event of Default***"), Seller shall have the right to (i) obtain from Buyer, and Buyer shall pay, a Termination Payment to Seller, and (ii) pursue any and all additional claims against Buyer in accordance with Section 8.3.(b). In the event any Buyer Event of Default remains uncured following any applicable notice and cure period, Seller shall have the right to provide Buyer with written notice of its intent to terminate this Agreement and terminate this Agreement forty-five (45) days after Buyer's receipt of such notice; provided that, for terminations relating to payment of amounts owed by Buyer, Seller may terminate forty-five (45) days after Buyer's receipt of such notice.

(b) Seller agrees that the sole and exclusive means for the presentation of any claim against the Buyer arising from this Agreement shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims Against the State), and Seller further agrees not to initiate legal proceedings in any state or federal court in addition to, or in lieu of, said Chapter 53 proceedings.

**8.4 Termination Payment Notice.** In the event that Seller elects to require payment of the Termination Payment by Buyer as provided in Section 8.3(a), then, as soon as practicable after calculation of the Termination Payment by Seller, Seller will notify Buyer of the amount of the Termination Payment and any amount otherwise due and outstanding under this Agreement. Such notice will include a written statement explaining in reasonable detail the calculation of such amount. Buyer shall pay the Termination Payment and any amount otherwise due and outstanding under this Agreement to Seller forty-five (45) Business Days after the effectiveness of such notice. For the avoidance of any doubt, Buyer's failure to make the Termination Payment pursuant to this Section 8.4 shall not effect or preclude Seller's right or claim to such Termination Payment in a claim against Buyer pursuant to Section 8.3(b) above.

**8.5 Remedies Cumulative.** Except as specifically provided to the contrary, the rights and remedies contained in this Article 8 are cumulative with the other rights and remedies available under this Agreement or at law or in equity.

**8.6 Unpaid Obligations.** The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

## **ARTICLE 9. INVOICING AND PAYMENT**

**9.1 Consideration for Energy Credits Delivered.** As consideration for the delivery of Energy Credits to the Delivery Point by Seller, as measured by the Metering Device, Buyer shall pay for such Energy Credits at the applicable Energy Credit Rate shown in Exhibit E.

**9.2 Invoicing and Payment.** Seller will issue monthly invoices within ten (10) days after the conclusion of the preceding calendar month for deliveries made during that month. Except as specifically provided to the contrary herein or by written amendment by the Parties, all invoices under this Agreement will be due and payable not later than forty-five (45) days after receipt of the applicable invoice. Each Party will make payment by check, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts

due under this Agreement and not paid shall accrue interest at the Late Payment Interest Rate until paid in full to the extent permitted by Law.

**9.3 Disputed Amounts.** A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this Agreement at any time within twelve (12) months following the date the invoice (or invoice adjustment) was rendered. In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment (except any portions thereof that are manifestly inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, except as expressly provided otherwise elsewhere in this Agreement, and to give notice of the objection to the other Party. Any required payment will be made within forty-five (45) Business Days after resolution of the applicable dispute, together with interest accrued at the Late Payment Interest Rate from the due date to the paid date to the extent permitted by Law.

**9.4 No Setoff.** Except as otherwise set forth herein, each Party hereby waives all rights to set-offs of amounts due hereunder. The Parties agree that all amounts due hereunder are independent obligations and shall be made without set-off for other amounts due or owed hereunder.

**9.5 Records and Audits.** Each Party will keep, for a period not less than two (2) years after the expiration or termination of any Transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such Transaction. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to Transactions during such other Party's normal business hours. Notwithstanding the foregoing, in the event that Buyer conducts an audit and discovers an inaccuracy in Seller's invoices, charges, computations and payments required for a Transaction in an amount in excess of two percent (2%), Buyer shall be entitled to recover the cost and expense of the audit in addition to the other corrective actions required as a result of said audit.

**9.6 Currency.** All pricing offered, payments made and amounts referenced hereunder are and will be in U.S. dollars.

## **ARTICLE 10. REPRESENTATIONS AND WARRANTIES; BUYER ACKNOWLEDGEMENT**

**10.1 Representations and Warranties.** Each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation; (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action, do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it and do not require the consent of any third party; (c) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court; (d) it is acting for its own account, and has made its own independent decision to enter into this Agreement, and is not relying upon the advice or recommendations of the other Party in so doing; (e) it is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and (f) it understands that the other Party is not acting as a fiduciary for or an advisor to it or its Affiliates. Buyer represents and warrants to Seller that: (i) the information provided to Seller pursuant

to this Agreement as of the Effective Date is true and accurate in all material respects; (ii) Buyer has the supervision, care and control of the Premises; (iii) no electricity generated by the SEF will be used to heat a swimming pool; (iv) Buyer is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company and (v) each Party has no knowledge of any facts or circumstances that could materially and adversely affect their respective ability to perform their obligations hereunder.

**10.2 Buyer's Current Electric Requirements.** Buyer's annual electric requirements from Buyer's Beneficial Accounts, as may be amended from time to time pursuant to Section 3.3 (b), are such that the Buyer can utilize one hundred and ten percent (110%) of the estimated annual Energy Credits produced during each year of the Term, based on the Expected Output.

**10.3 Buyer Acknowledgement Regarding Inapplicability of Bankruptcy Code Section 366.** Buyer acknowledges and agrees that, for purposes of this Agreement, Seller is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor.

## **ARTICLE 11. LIABILITIES, DAMAGES, AND LIMITATIONS**

**11.1 Sovereign Immunity.** The Parties acknowledge and agree that nothing in this Agreement shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal Law or the Laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of this Agreement. To the extent that this section conflicts with any other section, this section shall govern.

**11.2 Limitation of Remedies, Liability and Damages.** The Parties confirm that with respect to the matters specified herein and to the extent specified the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. Without prejudice to the calculation of the amount of any Termination Payment and/or indemnity claims arising out of claims by third parties, neither Party will be liable for consequential, incidental, punitive, special exemplary or indirect damages, by statute, in tort or under contract under any indemnity provisions or otherwise; provided however, that notwithstanding the foregoing, in no event will the foregoing limitations of liability be applied to limit the extent of the liability of either Party to the other for intentional misconduct. The limitations imposed herein or remedies and the measure of damages are without regard to the applicable cause or causes, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive. Notwithstanding any provision of this Agreement to the contrary, Seller's maximum liability to the Buyer, except for indemnity obligations in respect of personal injury, property damage and intellectual property infringement claims, under this Agreement will be limited, in the aggregate to the difference between the amount Buyer actually pays to the Buyer's Serving Utility for replacement Energy and the amount Buyer would have had to pay to Seller for such Energy Credits supplied by Seller over the remaining term of the Agreement.

**11.3 Limitations on Warranties.** Except as expressly provided in this Agreement, Seller hereby disclaims any and all representations, warranties and guarantees, express or implied, including warranties of merchantability and fitness for a particular purpose.

**11.4 Duty to Mitigate.** Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement.

**ARTICLE 12.  
NOTICES**

**12.1 Notices.** All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing. Notices required to be in writing will be delivered by hand delivery, overnight delivery or regular, certified, or registered mail, return receipt requested. All notices shall be deemed to have been properly given or made upon the earliest to occur of: (a) actual delivery; (b) two (2) days after being sent by overnight courier service; (c) five (5) days after being deposited in the mail addressed as aforesaid; and (d) one (1) day after being sent by e-mail; provided that in the case of notice by e-mail such notice is followed promptly by the sending of the original of such notice by overnight courier service. A Party may change its address by providing notice of the same in accordance with the provisions of this section.

If to Seller:                   Greenskies Renewable Energy LLC  
180 Johnson Street, PO Box 251  
Middletown, CT 06457  
Attention: Stanley Chin, President

If to Buyer:                   Connecticut State Colleges and Universities  
61 Woodland Street  
Hartford, CT 06105  
Attention: Vice President for Facilities, Real Estate, and Infrastructure Planning

**ARTICLE 13.  
ASSIGNMENT AND FINANCING**

**13.1 Assignment; Binding Effect.**

(a) Except for assignments to Affiliates, neither Buyer nor Seller shall, without the prior written consent of the other, which consent will not be unreasonably withheld, conditioned or delayed, assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of Law, and any such assignment or transfer without such consent will be null and void.

(b) Notwithstanding the foregoing, Seller may, without the prior written consent of Buyer, assign, or otherwise directly or indirectly transfer all or any part of, or any right or obligation under this Agreement (i) to an Affiliate or any party that acquires Seller or all or substantially all of Seller's assets; (ii) for security purposes in connection with any financing or other financial arrangements regarding SEF; (iii) to any Financing Party; (iv) to any Qualified Assignee or (v) to an entity that enters into an agreement with a Qualified Assignee pursuant to which (1) such Qualified Assignee shall be responsible for SEF operation and maintenance under this Agreement and (2) Seller shall have granted to the Qualified Assignee all other rights granted to Seller herein necessary for operation and maintenance of SEF (each, a "***Permitted Transfer***"). Seller shall deliver notice of any Permitted Transfer to Buyer in writing within thirty (30) days. Buyer agrees, with approval of the State's Attorney General, to execute such reasonable consents to assignment and other documents, and to provide such information, as is requested by Seller in connection with any Permitted Transfer.



(c) Subject to the foregoing restrictions on assignment, this Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns and Seller shall have no further obligations under this Agreement.

**13.2 Cooperation with Financing.** Buyer acknowledges that Seller will be financing the construction of the SEF and Buyer agrees that it shall reasonably cooperate with Seller and its Financing Parties in connection with such financing for the SEF, including (a) the furnishing of such public information; (b) the giving of such certificates; (c) providing of an officer's certificate of Buyer or its affiliate that this Agreement was duly authorized, executed and delivered by Buyer, (d) the obtaining of any lien waivers, the execution of commercial law forms and such other documents, all as reasonably requested by Seller or any Financing Party to secure such Financing Party's collateral position in the SEF or in Seller's rights under this Agreement; *provided, however*, that the foregoing undertaking shall not obligate Buyer to change any rights of benefits, or increase any burdens, liabilities or obligations of Buyer, under this Agreement to the Financing Parties except as specifically provided herein.

#### **ARTICLE 14. FINANCING PARTY ACCOMMODATIONS**

**14.1 Buyer Acknowledgment.** Buyer acknowledges that Seller shall have the right to finance the SEF with financing accommodations from a Financing Party and that Seller's obligations will be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the SEF. In order to facilitate such necessary financing, Buyer agrees as set forth below.

**14.2 Consent to Assignment.** Notwithstanding any contrary term or provision of this Agreement, Seller shall have the right to assign this Agreement in connection with the financing or refinancing of the SEF, and Buyer consents to the assignment by Seller to the Financing Party of Seller's right, title and interest in and to this Agreement. Notwithstanding any contrary term or provision contained in this Agreement, any assignment of this Agreement to a Financing Party for financing or refinancing of the SEF shall not require Buyer's consent. In addition, Buyer shall in good faith work with Seller and Seller's Financing Party upon request to agree upon consent by Buyer to the assignment of this Agreement, provided that any such consent does not require Buyer to alter its rights and obligations pursuant to this Agreement in any way.

**14.3 Financing Party's Rights Following an Event of Default.** Notwithstanding any contrary term or provision of this Agreement:

(a) The Financing Party, as assignee, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement, provided that such Financing Party also satisfies the obligations of Seller hereunder. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the SEF.

(b) The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller hereunder or cause to be cured any default or Seller Event of Default in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any Seller Event of Default (unless the Financing Party has succeeded to Seller's interests) to perform any act, duty or obligation of Seller, but Buyer hereby gives the Financing Party the option to do so.

(c) Upon the exercise of remedies under its security interest in the SEF, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance from Seller to the Financing Party, Buyer's consent shall not be required, however, the Financing Party will give notice to Buyer of the transferee or assignee of this Agreement; *provided, further*, that any sale, transfer or other disposition of the SEF by the Financing Party, whether by judicial proceeding or otherwise, shall be made solely to a Qualified Assignee. Any such exercise of remedies shall not constitute an Event of Default.

(d) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Financing Party made within sixty (60) days of such termination or rejection, Buyer will enter into a new Agreement with Financing Party or its Qualified Assignee, on the same terms and conditions as hereunder.

(e) In the event that a Financing Party becomes the owner of the SEF as a result of the exercise of remedies under subsections (c) or (d) above, whether as a result of the exercise of its remedies as a secured party or in connection with the bankruptcy of Seller, the Financing Party shall agree not to disturb the Buyer's rights to purchase Energy under this Agreement, pursuant to the terms and conditions hereof, and further agrees to sell its right in the SEF or the Agreement to a Qualified Assignee purchaser only if such purchaser agrees to continue to provide Buyer with Energy under this Agreement in accordance with the terms and conditions thereof.

#### **14.4 Financing Party's Right to Cure.**

(a) Upon receipt from Financing Party of its invocation of the rights provided for in this Section 14.4 and the name and address of the Financing Party entitled to notice, Buyer will not exercise any right to terminate this Agreement unless Buyer has given the Financing Party prior written notice at the address provided to Buyer in writing of any event giving rise to Buyer's right to terminate this Agreement. Buyer's notice of an intent to terminate this Agreement must specify the condition giving rise to such right. Notwithstanding any contrary term or provision in this Agreement, Financing Party shall have forty-five (45) days beyond the cure period provided to Seller pursuant to this Agreement to cure the condition. Buyer's and Seller's obligations under this Agreement will otherwise remain in effect and required to be fully performed during any cure period.

(b) If the Financing Party or its Qualified Assignee (including any purchaser which meets the definition of a Qualified Assignee) has commenced and is diligently pursuing judicial proceedings to acquire title to or control of the SEF, or has acquired title to or taken control of the SEF, and in either event cures all existing Seller Events of Default that are capable of being cured by Financing Party or its Qualified Assignee subject to and within the time allowed by Section 14.4(a) and assumes in writing the obligations of Seller hereunder, then this Agreement will continue in full force and effect.

**14.5 Notice of Defaults and Events of Default.** Upon and at any relevant time after receipt of the notice provided for in Section 14.4(a), Buyer agrees to deliver to the Financing Party a copy of any notice of a Seller's default simultaneously with the delivery of such notice by Buyer to Seller.

### **ARTICLE 15. MISCELLANEOUS**

**15.1 Governing Law.** This Agreement will be governed by the Laws of the State in which the SEF is located, without giving effect to principles of conflicts of Laws.

**15.2 Entire Agreement; Amendments.** This Agreement (including the exhibits, any written schedules, supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. Without limiting the generality of the foregoing, the Parties acknowledge and agree that, as of the Effective Date of the Agreement, (a) any and all prior agreements between the Parties relating to the subject matter of the Agreement, including the Initial Agreement (collectively, the “*Prior Agreements*”) are superseded in their entirety by the Agreement, (b) the Prior Agreements are of no further force or effect and no longer the legal obligation of either Party, (c) no Party had, nor now has, any claim against, or liability or obligation to, the other Party under the Prior Agreements, and (d) no asset or property of either Party was, or now is, bound by, or subject to, any encumbrance, lien or other restriction by reason of the Prior Agreements. Except as otherwise expressly provided in this Agreement, any amendment, modification or change to this Agreement will be void unless in writing and executed by both Parties and approved by the Office of the Attorney General of the State of Connecticut, if applicable.

**15.3 Non-Waiver.** No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. No waiver by either Party of a breach of any term or provision contained herein shall be effective unless signed and in writing and signed by the waiving Party. No consent by either Party to, or waiver of a breach by either Party, whether express or implied, shall be construed operate as or constitute a consent to waiver of, or excuse of any other or subsequent or succeeding breach by either Party.

**15.4 Severability.** If any part, term, or provision of this Agreement, is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality or enforceability of any other part, term, or provision of this Agreement, and shall not render this Agreement unenforceable or invalid as a whole. Rather the part of this Agreement that is found invalid or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal enforceable, and valid provision that is as similarly in tenor to the stricken provision, within the limits of applicable Law, and the remainder of this Agreement will remain in full force.

**15.5 No Third Party Beneficiaries.** Nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind.

**15.6 No Recourse to Affiliates.** This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder unless such obligations were assumed in writing by the Person against whom recourse is sought.

**15.7 Relationship of Parties.** The Parties are independent contractors, and will not be deemed to be partners, joint ventures or agents of each other for any purpose unless expressly stated otherwise herein.

**15.8 Counterparts.** This Agreement may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Agreement received by either Party by facsimile or other electronic transmissions (such as an email .pdf file) is binding upon the other Party as an original.

**15.9 Further Assurances.** The Parties shall at their own cost and expense do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this Agreement.



**15.10 General Interpretation.** The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument of any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any person.

**15.11 Removal of Liens.** Seller shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code financing statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the SEF in order to protect its rights in the SEF.

**15.12 Forward Contract.** The Parties acknowledge and agree that this Agreement and the transactions consummated under this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

**15.13 Dispute Resolution.**

(a) Good Faith Negotiations. In the event that any question, dispute, or difference arises out or in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a “Dispute”), then senior management personnel from both Seller and Buyer shall meet and diligently attempt in good faith to resolve the Dispute for a period of thirty (30) days following one Party’s written request to the other Party for such a meeting.

(b) Jurisdiction and Venue. In the event the Parties are unable to resolve a Dispute pursuant to the provisions of Section 15.13(a), the Parties deem this Agreement to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of this Agreement to be, and it shall be, governed by the Laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of Laws. To the extent that any immunities provided by Federal Law or the Laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Seller waives any objection which it may now have or will have to the laying of venue of any claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

**15.14 Freedom of Information Act.** Buyer shall comply with all Connecticut Freedom of Information Act (“FOIA”) requirements, any Federal, State, or local statute, regulation, ordinance, or State policy that mandates disclosure and may require disclosure for an audit that may become public. Notwithstanding anything herein to the contrary, Buyer shall use best efforts to not disclose any information associated with this Agreement which falls under the FOIA exemption enumerated in Section 1-210(b) of the Connecticut General Statutes.

### **15.15 Nondiscrimination.**

References in this section to “contract” shall mean this Agreement and references to “Contractor” shall mean Seller.

(a) For purposes of this Section, the following terms are defined as follows:

(i) “Commission” means the Commission on Human Rights and Opportunities;

(ii) “Contract” and “contract” include any extension or modification of the Contract or contract;

(iii) “Contractor” and “contractor” include any successors or assigns of the Contractor or contractor;

(iv) “Gender identity or expression” means a person’s gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person’s core identity or not being asserted for an improper purpose;

(v) “good faith” means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(vi) “good faith efforts” shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(vii) “marital status” means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(viii) “mental disability” means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association’s “Diagnostic and Statistical Manual of Mental Disorders”, or a record of or regarding a person as having one or more such disorders;

(ix) “minority business enterprise” means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of C.G.S. § 32-9n; and

(x) “public works contract” means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in C.G.S. § 1-267, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3), or (4).

(b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the Laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and C.G.S. §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to C.G.S. §§ 46a-56, 46a-68e and 46a-68f and 46a-86; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and C.G.S. § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

(d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

(e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with C.G.S. § 46a-56, as amended; provided if such Contractor becomes involved in, or is threatened

with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

(g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the Laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to C.G.S. § 46a 56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and C.G.S. § 46a-56.

(h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with C.G.S. § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

**15.16 Executive Orders.** References in this section to "contract" shall mean this Agreement and references to "Contractor" shall mean Seller. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services and to Executive Order No. 49 of Governor Dannel P. Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office. If Executive Order 14 and/or Executive Order 49 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Seller's request, the Buyer shall provide a copy of these orders to the Seller.



**15.17 Summary of State Ethics Laws.** Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethic Laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of this Agreement as if the summary had been fully set forth in this Agreement.

**15.18 Whistleblower Law.** This Agreement may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Seller takes or threatens to take any personnel action against any employee of the Seller in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Seller shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Agreement. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the contractor.

**15.19 Disclosure of Records.** This Agreement may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to the FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

**15.20 Campaign Contribution Restrictions.** For all state contracts as defined in Connecticut General Statutes §9-612(g)(2), as amended by P.A. 10-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Election Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Notice below.

**NOTICE TO EXECUTIVE BRANCH STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS OF CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS**

This notice is provided under the authority of Connecticut General Statutes §9-612(g)(2), as amended by P.A. 10-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (italicized words are defined below):

**CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS**

No *state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor*, with regard to a *state contract or state contract solicitation* with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a

political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee (which includes town committees).

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

On and after January 1, 2011, no state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall **knowingly solicit** contributions from the state contractor's or prospective state contractor's employees or from a *subcontractor* or *principals of the subcontractor* on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

#### **DUTY TO INFORM**

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

#### **PENALTIES FOR VIOLATIONS**

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

Civil penalties: Up to \$2,000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of up to \$2,000 or twice the amount of the prohibited contributions made by their principals.

Criminal penalties: Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or not more than \$5,000 in fines, or both.

#### **CONTRACT CONSEQUENCES**

In the case of a state contractor, contributions made or solicited in violation of the above prohibitions may result in the contract being voided.

In the case of a prospective state contractor, contributions made or solicited in violation of the above prohibitions shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State shall not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information may be found on the website of the State Elections Enforcement Commission, [www.ct.gov/seec](http://www.ct.gov/seec). Click on the link to "Lobbyist/Contractor Limitations."

#### **DEFINITIONS**

"State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the

state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

“Prospective state contractor” means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. “Prospective state contractor” does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

“Principal of a state contractor or prospective state contractor” means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

“State contract” means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. “State contract” does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

“State contract solicitation” means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

“Managerial or discretionary responsibilities with respect to a state contract” means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

“Dependent child” means a child residing in an individual’s household who may legally be claimed as a dependent on the federal income tax of such individual.

“Solicit” means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for

the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

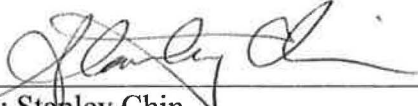
“Subcontractor” means any person, business entity or nonprofit organization that contracts to perform part or all of the obligations of a state contractor's state contract. Such person, business entity or nonprofit organization shall be deemed to be a subcontractor until December thirty first of the year in which the subcontract terminates. “Subcontractor” does not include (i) a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or (ii) an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

“Principal of a subcontractor” means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a subcontractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a subcontractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a subcontractor, which is not a business entity, or if a subcontractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any subcontractor who has managerial or discretionary responsibilities with respect to a subcontract with a state contractor, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the subcontractor.




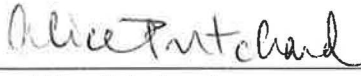
IN WITNESS WHEREOF, intending to be legally bound, Seller and Buyer have signed this Agreement through their duly authorized representatives effective as of the date first set forth above.

GREENSKIES RENEWABLE ENERGY LLC.

By:   
Name: Stanley Chin  
Title: President  
Date: June 4, 2019


CONNECTICUT STATE COLLEGES AND UNIVERSITIES

By:   
Name: Benjamin Barnes  
Title: Chief Financial Officer  
Date: 6/7/19

By:   
Name: Alice Pritchard  
Title: Chief of Staff  
Date: 6/7/19

**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF CONNECTICUT**

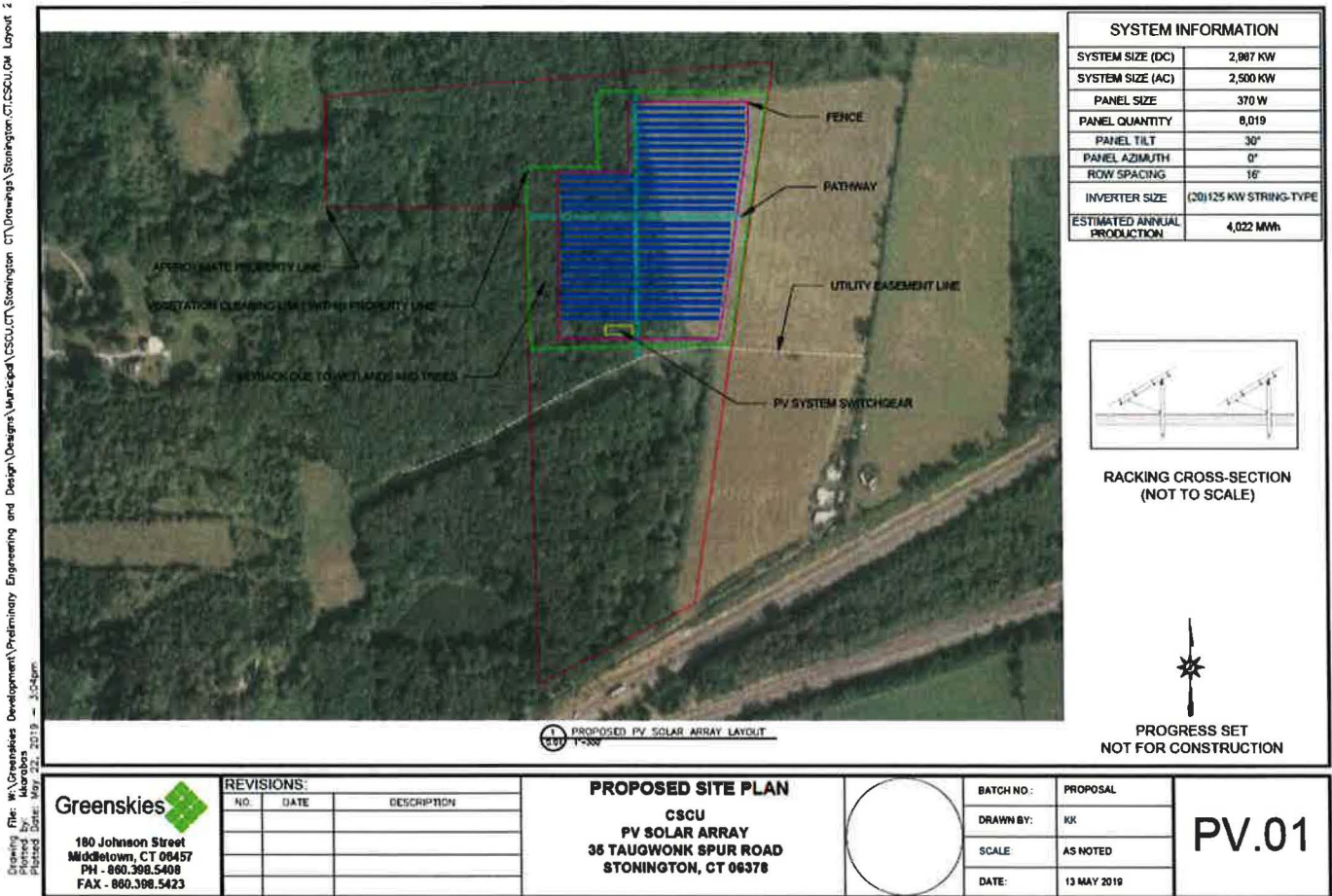
*Approved as to form*

By:   
Joseph Rubin **ASST. DEPUTY ATTY. GENERAL**  
Title: ~~Assistant / Associate Attorney General~~  
Date: 6/13/19

## EXHIBIT A

### SOLAR ENERGY FACILITY

The solar energy facility (SEF) shall consist of 4,022,248 kWh (the “*Expected System Output*”) and installed nominal capacity of 2,500 kW AC. The SEF shall be interconnected electrically directly to the Buyer’s Serving Utility’s distribution system.



**EXHIBIT B**

**PROPERTY**

SITUATED IN THE COUNTY OF NEW LONDON, STATE OF CONNECTICUT:

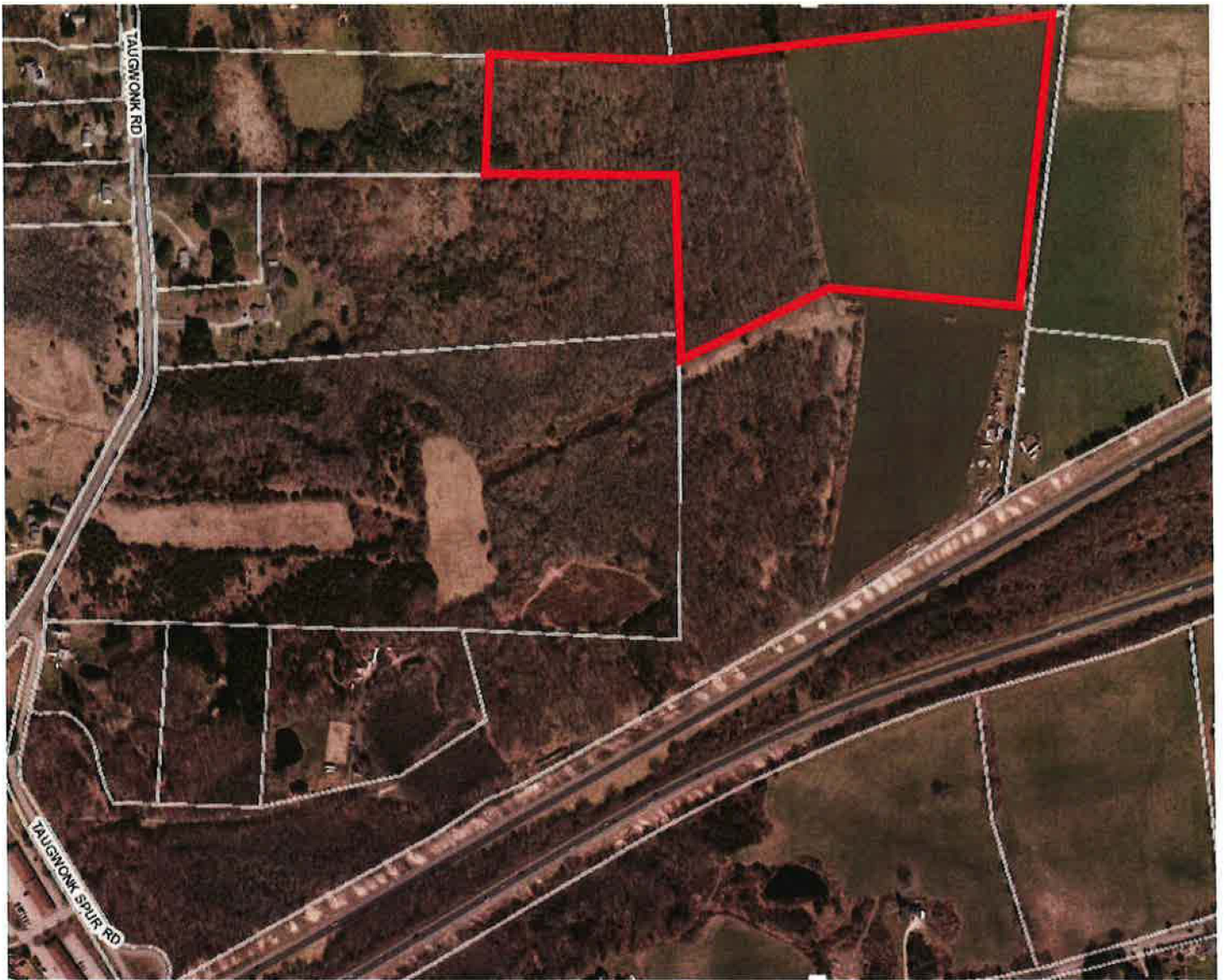
ALL THAT CERTAIN PIECE OR PARCEL OF LAND, WITH ALL THE IMPROVEMENTS THEREON, SITUATED IN THE TOWN OF STONINGTON, COUNTY OF NEW LONDON AND STATE OF CONNECTICUT, AND SHOWN AS MBL #84-1-2 ON A CERTAIN MAP ENTITLED, "TOWN OF STONINGTON CT PROPERTY LISTING REPORT" AND FILED ON THE STONINGTON LAND RECORDS.

The above described property includes all that certain real property together with all improvements, buildings, and other structures thereon known as 35 Taugwonk Spur Road, Stonington, CT.



**EXHIBIT C**

**PREMISES**



## EXHIBIT D

### Schedule of Definitions and Rules of Interpretation

1. **Definitions.** The definitions provided below and elsewhere in this Agreement will apply to the defined terms used in this Agreement:

(a) **"Affiliate"** means with respect to any entity, such entity's general partner or manager, employee, or any other entity that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such entity. For purposes of this definition, "control" (including, with its correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any such person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities or by contract or otherwise.

(b) **"Agreement"** means this Virtual Net Metering Credit Purchase Agreement.

(c) **"Bankrupt"** means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) is unable to pay its debts generally as they come due or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within sixty (60) days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(d) **"Buyer"** shall have the meaning ascribed to it in the Preamble.

(e) **"Buyer's Beneficial Accounts"** has the meaning ascribed thereto in Section 3.3 (b).

(f) **"Buyer Event of Default"** has the meaning ascribed thereto in Section 8.3.

(g) **"Buyer's Serving Utility"** means The Connecticut Light and Power Company d/b/a Eversource Energy.

(h) **"Business Day"** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

(i) “**CAMD**” means the Clear Air Markets Division of the United States Environmental Protection Agency or any successor or other agency that is given jurisdiction over a program involving transferability of specific Environmental Attributes.

(j) “**Capacity Attributes**” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the SEF, intended to value any aspect of the capacity of the SEF to produce Energy or ancillary services, which may be counted toward any measure, regulation, requirement, or program of Buyer’s Serving Utility, Governmental Entity, independent SEF operator, utility, transmission and distribution provider or other similar entity.

(k) “**Capacity Attributes Revenue**” shall have the meaning prescribed to it in Section 3.7.

(l) “**Claiming Party**” shall have the meaning ascribed to it in Section 7.2.

(m) “**Commercial Operation**” will begin on the day in which the entire SEF is operating on a sustained basis and producing Energy and Seller is in receipt of all required approvals, signoffs and permits from any and all Governmental Entities and the Buyer’s Serving Utility for the production, delivery and sale of Energy (including the Energy Credits and resale of Energy to Buyer’s Serving Utility).

(n) “**Commercial Operation Date**” means the date upon which the SEF begins Commercial Operation, as set forth in the Notice of Commercial Operation.

(o) “**Defaulting Party**” shall have the meaning ascribed to it in Section 8.1.

(p) “**Delivery Point**” means the interconnection point with the Buyer’s Serving Utility. No other delivery points are permitted under this Agreement without the permission of the Buyer.

(q) “**Discounted Revenue Forecast**” means the sum of the present values calculated at the per annum rate of interest equal to four percent (4%) of the following amounts for each year (or part thereof) remaining between the early termination date and the end of the Term: (i) the applicable Energy Credit Rate for such year, if known, or a mutually agreed estimate of the Energy Credit Rate for such year, multiplied by (ii) the average annual output during the previous three (3) years.

(r) “**Effective Date**” shall have the meaning ascribed to it in the Preamble to this Agreement.

(s) “**Energy**” means electric energy (alternating current, expressed in kilowatt-hours) generated by the SEF. Energy does not include any attendant Environmental Attributes.

(t) “**Energy Credit**” shall have the meaning ascribed to it in Section 3.1.

(u) “**Energy Credit Rate**” shall have the meaning ascribed to it in Section 3.2.



(v) “**Environmental Attributes**” means each of the following that is in effect as of the Effective Date or in the future: (i) credits, benefits, reductions, offsets and other beneficial allowances, including, to the extent applicable and without limitation, performance based incentives or renewable portfolio standard in the state in which the Premises are located or in other jurisdictions (collectively, “**Allowances**”) attributable to the ownership or operation of the SEF or the production or sale of Energy, (ii) other Allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy or Energy Credits during the Term and in which Seller has good and valid title, including any credits to be evidence by Solar Renewable Energy Certificates or similar laws or regulations applicable in any jurisdiction, (iii) any such Allowances related to (A) oxides of nitrogen, sulfur, or carbon, (B) particulate matter, soot, or mercury, or (C) the United Nations Framework Convention on Climate Change (the “**UNFCCC**”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, or involving or administered by the CAMD, and (iv) all reporting rights with respect to such allowances under Section 1605(b) of the Energy Policy Act of 1992, as amended from time to time or any successor statute, or any other current or future international, federal, state or local law, regulation or bill, or otherwise. Environmental Attributes shall also include Tax Benefits.

(w) “**Event of Default**” shall have the meaning ascribed to it in Section 8.1.

(x) “**Expected System Output**” shall have the meaning ascribed to it in Exhibit A.

(y) “**Financing Party**” or “**Financing Parties**” shall mean any and all Persons or successors or assignees thereof lending money or extending credit to Seller or an Affiliate of Seller, or investing equity (including tax equity) in Seller or an Affiliate of Seller: (i) for the construction, term or permanent financing of the SEF; (ii) for working capital or other ordinary business requirement of the SEF (including but not limited to the maintenance, repair, replacement or improvement of the SEF); (iii) for any development financing, bridge financing, credit enhancement, credit support or interest rate protection in connection with the SEF; (iv) for the Seller’s operation of the SEF; or (v) for the purchase of the SEF and related rights and obligations of Seller.

(z) “**FOIA**” shall have the meaning ascribed to it in Section 15.14.

(aa) “**Force Majeure**” means any event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance (i) is not within the reasonable control, or is not the result of the negligence or willful misconduct, of the Claiming Party, and (ii) by the exercise of reasonable due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided and shall be deemed to include, but not be limited to, acts of God, acts of civil or military authorities, acts of war or public enemy, terrorism, threat of terrorism, insurrections, riots, fires, explosions, floods, interruption of transportation, embargoes, or other causes of a similar nature. Force Majeure will not be based on (i) Buyer’s inability to economically to use Energy Credits purchased hereunder or by for such Energy, or (ii) Seller’s ability to sell Environmental Attributes at any price or Energy Credits at a price greater than the price of Energy Credits under this Agreement.

(bb) “**Governmental Approvals**” means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described which are required to be obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the SEF, the production and delivery of Energy, and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

(cc) “**Governmental Charges**” means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, license fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Entity, independent system operator, utility, transmission and distribution provider or other similar entity, on or with respect to the Energy or this Agreement.

(dd) “**Governmental Entity**” means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, program administrator or other instrumentality of any government, whether federal, state or local, domestic or foreign, or any Person, owned, operated, managed or otherwise controlled thereby.

(ee) “**ITC Credit**” means (i) the energy credit under Section 48 of the Internal Revenue Code of 1986, and (ii) the grant under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, as each may be amended, supplemented, extended or replaced from time to time, and including all successor enactments or legislation relating thereto.

(ff) “**Interconnection Agreement**” means the agreement for interconnection of the SEF with the distribution system of Buyer’s Serving Utility.

(gg) “**Interconnection Equipment**” means that portion of the SEF, including mounting substrates or supports, wiring and connections, power inverters, service equipment, Metering Devices and equipment and utility interconnections, as required or appropriate to effect the interconnection of the SEF to the Buyer’s Serving Utility, including such as may be located on Buyer’s Leased Premises.

(hh) “**Late Payment Interest Rate**” means, for any date, the lesser of (i) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or, if not published on such day, on the most recent preceding day on which published), plus 2%, or (ii) the maximum rate permitted by applicable Law.

(ii) “**Law**” means any federal, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to this Agreement or the transaction contemplated hereby.



(jj) “**Metering Device**” means any and all Seller owned and operated meters at or immediately before the Delivery Point needed for the registration, recording, and transmission of information regarding the Energy delivered to the Delivery Point.

(kk) “**Minimum Energy Output Requirements**” shall have the meaning ascribed to it in Section 3.6.

(ll) “**Non-Defaulting Party**” shall have the meaning ascribed to it in Section 8.1(a).

(mm) “**Notice of Commercial Operation**” shall have the meaning ascribed to it in Section 2.3.

(nn) “**Parties**” shall have the meaning ascribed in the Preamble.

(oo) “**Permitted Transfer**” shall have the meaning ascribed to it in Section 13.1(b).

(pp) “**Person**” means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Entity, limited liability company, or any other entity of whatever nature.

(qq) “**Prudent Utility Practices**” means those practices, methods, and acts, that are commonly used by a significant portion of the solar powered electric generation industry in the United States using prudent engineering and operations to design and operate solar powered generating facilities and related electric equipment lawfully and with safety, dependability, efficiency, and economy, including all applicable requirements of Law. Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of possible standards, practices, methods or acts expected to accomplish the desired results, having due regard for, among other things, manufacturers’ warranties and the requirements of governmental authorities of competent jurisdiction and the requirements of this Agreement.

(rr) “**Prior Agreements**” shall have the meaning ascribed to it in Section 15.2.

(ss) “**Qualified Assignee**” means as it pertains to any assignment of this Agreement by Seller, any entity that has competence and experience in the operation and maintenance of solar photovoltaic systems similar in size and type as the SEF and is financially capable of performing Seller’s obligations under this Agreement, all as reasonably demonstrated to Buyer, and agrees in writing to assume Seller’s duties and obligations under the Agreement.

(tt) “**Representatives**” means, in respect of a Person, the officers, directors, employees, agents, advisors, contractors, or other representatives of such Person (for the avoidance of doubt, this does not include students of such Person who do not fall into any of the foregoing categories of such Person).

(uu) “**SEF**” means the solar electric generating facility that produces the Energy and Energy Credits purchased under this Agreement as more particularly defined in Exhibit A hereto, including the Interconnection Equipment.

(vv) “**SEF Assets**” means each and all of the assets of which the SEF is comprised, including Seller’s solar energy panels, mounting systems, carports, tracking devices, inverters, integrators and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Delivery Point, protective and associated equipment, improvements, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the SEF.

(ww) “**SEF Loss**” means loss, theft, damage or destruction of the SEF or SEF Assets, or any other occurrence or event that prevents or limits the SEF from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or other Force Majeure).

(xx) “**Seller**” shall have the meaning ascribed to it in the Preamble.

(yy) “**Seller Event of Default**” has the meaning ascribed thereto in Section 8.2.

(zz) “**Seller Termination Default**” has the meaning ascribed thereto in Section 8.2.

(aaa) “**Solar Renewable Energy Certificates**” or “**SRECs**” means the certificate representing the environmental attributes associated with Energy, as developed under the oversight and regulations of the State of Connecticut Public Utilities Regulatory Authority, including any modifications or revisions thereof adopted by such regulator or any successor agency.

(bbb) “**Tax Benefits**” means ITCs attributable to the SEF or Energy (including the ITC Credit), accelerated depreciation attributable to the SEF or any SEF Asset, and any other tax credit or tax write-offs allowed under applicable law attributable to the SEF or Energy, irrespective of whether such Tax Benefits accrue for the benefit of Seller, any Affiliate, or any investor of Seller or any Affiliate of such investor.

(ccc) “**Term**” shall have the meaning ascribed thereto in Section 2.1.

(ddd) “**Termination Payment**” means an amount equal to the sum of (i) Discounted Revenue Forecast applicable through the end of the Initial Term or the applicable extension term, as the case may be, (ii) the value of Environmental Attributes relating thereto, such value determined based on the greater of the value at which Seller had contracted to sell those Environmental Attributes or the spot market value, and (iii) the value of any lost Tax Benefits.

(eee) “**Third Party Monitor**” means an unaffiliated third party, selected in each case by Seller and reasonably approved by Buyer that provides, installs, operates or maintains the installation, operation, or maintenance of the Metering Device.

(fff) “**Transaction**” means any transaction between the Parties under the terms of this Agreement.

(ggg) “**Utility Requirements**” means any protocols, procedures, or guidelines which apply to the SEF and are implemented, required or otherwise adopted by Buyer’s Serving Utility.

(hhh) “*Virtual Net Metering Credit*” or (“*VNMC*”) means a monthly monetary credit from the Buyer’s Serving Utility associated with the amount of Energy Credits provided by the Seller under this Agreement in accordance with the Virtual Net Metering Rider as administered by the Buyer’s Serving Utility.

2. **Rules of Interpretation.** In this Agreement, unless expressly provided otherwise:

(a) the words “herein,” “hereunder” and “hereof” refer to the provisions of this Agreement and a reference to a recital, Article, Section, subsection or paragraph of this Agreement or any other agreement is a reference to a recital, Article, Section, subsection or paragraph of this Agreement or other agreement in which it is used unless otherwise stated;

(b) references to this Agreement, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto;

(c) reference to any Article, Section, or Exhibits means such Article of this Agreement, Section of this Agreement, or such Exhibit to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;

(d) a reference to this Agreement, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this Agreement or such other agreement, instrument or provision, as the case may be;

(e) a reference to a statute or other Law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, Law or provision;

(f) the singular includes the plural and vice versa;

(g) a reference to a Person includes a reference to the Person’s executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;

(h) words of any gender shall include the corresponding words of the other gender;

(i) “including” means “including, but not limited to,” and other forms of the verb “to include” are to be interpreted similarly;

(j) references to “or” shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, “or” shall be interpreted to mean “and/or” rather than “either/or”);

(k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;

(l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;

(m) if the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;

(n) a reference to (i) a day is a reference to a calendar day, (ii) a month is a reference to a calendar month, and (iii) a year is a reference to a calendar year;

(o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;

(p) references to any date in this Agreement shall be deemed to mean such date as adjusted from time to time as permitted hereunder due to Force Majeure unless expressly stated otherwise; and

(q) if any index used in this Agreement at any time becomes unavailable, whether as a result of such index no longer being published or the material alteration of the basis for calculating such index, then Seller and Buyer shall agree upon a substitute index that most closely approximates the unavailable index as in effect prior to such unavailability. If the base date of any such index is at any time reset, then the change to the index resulting therefrom shall be adjusted accordingly for purposes of this Agreement.

**EXHIBIT E**

**ENERGY CREDIT RATE**

Cost of Electricity Per kWh

	Base Term Contract	Contract Extension One	Contract Extension Two
YEAR 1	0.0538		
YEAR 2	0.0538		
YEAR 3	0.0538		
YEAR 4	0.0538		
YEAR 5	0.0538		
YEAR 6	0.0538		
YEAR 7	0.0538		
YEAR 8	0.0538		
YEAR 9	0.0538		
YEAR 10	0.0538		
YEAR 11	0.0538		
YEAR 12	0.0538		
YEAR 13	0.0538		
YEAR 14	0.0538		
YEAR 15	0.0538		
YEAR 16	0.0538		
YEAR 17	0.0538		
YEAR 18	0.0538		
YEAR 19	0.0538		
YEAR 20	0.0538		
YEAR 21		0.0538	
YEAR 22		0.0538	
YEAR 23		0.0538	
YEAR 24		0.0538	
YEAR 25		0.0538	



**EXHIBIT F**

**RESERVED**

**EXHIBIT G**

**MINIMUM ENERGY OUTPUT REQUIREMENTS**

Minimum Energy Output Requirements calculated below are subject to any adjustments made during final engineering design.

<b>True-up Period</b>	<b>Contract Years</b>	<b>Expected System Output (kWh)</b>	<b>Minimum Energy Output Requirement (90% of estimated) (kWh)</b>
1	1-2	8,024,385	7,221,947
2	3-4	7,944,342	7,149,908
3	5-6	7,865,097	7,078,587
4	7-8	7,786,642	7,007,978
5	9-10	7,708,971	6,938,074
6	11-12	7,632,074	6,868,867
7	13-14	7,555,944	6,800,350
8	15-16	7,480,573	6,732,516
9	17-18	7,405,954	6,665,359
10	19-20	7,332,080	6,598,872